

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Chief Administrative Law Judge's  
Notices to the Public

Docket No. AD20-12-000

NOTICE TO THE PUBLIC

UNIFORM HEARING RULES

(Issued September 1, 2020)

1. Pursuant to sections 554, 556, and 557<sup>1</sup> of the Administrative Procedure Act and authority duly delegated by the Chairman of the Commission,<sup>2</sup> Uniform Hearing Rules are hereby adopted effective September 15, 2020.
2. Rule 504 of the Commission's Rules of Practice and Procedure<sup>3</sup> generally permits the presiding officer to schedule and otherwise regulate the course of the hearing, recess, reconvene, postpone, or adjourn the hearing, cause discovery to be conducted, hold conferences, rule on, and dispose of, procedural matters, phase issues, maintain order, modify time periods, limit witnesses, require or authorize evidentiary admissions, and take "any other action necessary or appropriate to the discharge of the duties of a presiding officer, consistent with applicable law and policy."<sup>4</sup>
3. The authority contained in Rule 504, as well as "the power granted to a Presiding Officer by part 385[]" may be exercised by the Chief Administrative Law Judge under

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<sup>1</sup> Administrative Procedure Act, 5 U.S.C. §§ 554, 556, and 557 (2018).

<sup>2</sup> 18 C.F.R. § 375.304(a)(1) (2019) ("The Commission authorizes the Chief Administrative Law Judge . . . exercise the power granted to a Presiding Officer by part 385, particularly § 385.504 of this chapter."); 18 C.F.R. § 385.504 (2019).

<sup>3</sup> 18 C.F.R. § 385.504.

<sup>4</sup> *Id.* §§ 385.504(b)(1),(2),(5),(7),(8),(13),(14)(i),(ii), (15)-(18), (20).

authority of Section 304(a) of the Commission's Revised General Rules, Delegations to the Chief Administrative Law Judge.

4. Accordingly, pursuant to Section 304(a), incorporating broad authority of presiding officers to regulate the schedule, phase, procedure, course, order, conduct, and action related to respective proceedings and their participants before the Office of Administrative Law Judges (OALJ), Uniform Hearing Rules are hereby adopted for all OALJ hearings effective September 15, 2020. This includes all hearings presently scheduled to commence after September 15, 2020 and, by Standing Order<sup>5</sup> of the Chief Administrative Law Judge,<sup>6</sup> for all proceedings for which hearing procedures are hereafter established and assigned a presiding administrative law judge.

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<sup>5</sup> This Standing Order incorporates the authorities *supra* PP 1-3; *see also* Judicial Conference of the U.S., Comm. on Rules of Practice and Procedure, *Report and Recommended Guidelines on Standing Orders in District and Bankruptcy Courts* (2009), available at [http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Standing\\_Orders\\_Dec\\_2009.pdf](http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Standing_Orders_Dec_2009.pdf) (surveying varying federal court practices and precedents and finding standing orders most appropriate, and least “problematic,” when they are publicly accessible, impose flexible standards, permit public participation, and do not conflict with otherwise applicable rules or statutes, among other recommendations and best practices).

<sup>6</sup> *See, e.g., Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges* (Aug. 11, 2014) (Biro, C.J.), available at <https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-efiling.pdf>. The creation of uniform hearing rules is consistent with a federal courts’ “power to issue . . . [s]tanding [o]rder[s] . . . from the court’s inherent authority to regulate the practice of litigants before it.” *United States v. Ray*, 375 F.3d 980, 992 (9th Cir. 2004); *In re Peterson*, 253 U.S. 300, 312 (1920) (“Courts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties.”); and it is an exercise of federal judicial power consistent with those held by administrative or legislative courts. *See Freytag v. Comm’r*, 501 U.S. 868, 889 (1991) (“[T]he judicial power of the United States is not limited to the judicial power defined under Article III and may be exercised by legislative courts[.]”) (summarizing *American Insurance Co. v. Canter*, 1 Pet. 511, 546, 7 L.Ed. 242 (1828) and citing *Williams v. United States*, 289 U.S. 553, 565–567 (1933)); *see also* § 5:24. The structure of the administrative judge function, 2 Admin. L. & Prac. § 5:24 (3d ed.) (“[Administrative Law Judges’] constitutional status is equal to bankruptcy judges and immigration judges.”); *In re Calderon*, 497 B.R. 558, 560 (Bankr. E.D. Ark. 2013) (“ . . . bankruptcy courts are Article I courts (or legislative courts) under the United States Constitution . . .”) (citing *N.*

5. The Uniform Hearing Rules set forth herein may be amended or revoked by further order of the Chief Administrative Law Judge. Also, the Presiding Judge in a specific case may issue an order modifying these Uniform Hearing Rules if deemed appropriate in his or her discretion, provided that any such modification is consistent with Commission rules and applicable law.<sup>7</sup>

6. The most current version of the Uniform Hearing Rules will be issued in Docket No. AD20-12-000 and be publicly available on the Commission's Administrative Litigation webpage<sup>8</sup> and in the above-captioned docket.

SO ORDERED.

Carmen A. Cintron  
Chief Administrative Law Judge

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*Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59–61 (1982) and referencing U.S. Const. Art. III, § 1. ); Richard H. Fallon, *Of Legislative Courts, Administrative Agencies, and Article III*, 101 Harv. L. Rev. 915, 928 (1988) (“ . . . there is, from the perspective of article III, no difference in constitutional principle between legislative courts and administrative agencies . . . ”) (*Fallon*); *Samuels, Kramer & Co. v. Comm'r*, 930 F.2d 975, 992 (2d Cir. 1991) (“We believe that the work performed by legislative courts and adjudicatory agencies cannot be distinguished.”) (citing *Fallon*); *accord. Klein v. United States*, 94 F. Supp. 2d 838, 845 (E.D. Mich. 2000).

<sup>7</sup> For the avoidance of doubt, this Order does not amend a Presiding Judge's authority to regulate practice in any manner consistent with the Commission's rules and applicable law, including but not limited to those authorities specified in 18 C.F.R. § 385.504.

<sup>8</sup> FERC, Administrative Litigation, available at <https://www.ferc.gov/enforcement-legal/legal/administrative-litigation>.